

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

FOREMAN ELECTRIC SERVICES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-21-1182-J
)	
MAMMOTH ENERGY SERVICES, INC.)	
and COBRA ACQUISITIONS, LLC,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff's Motion to Remand Case to Oklahoma County District Court [Doc. No. 7]. Defendants have filed a response, and Plaintiff has filed a reply.

On December 14, 2021, Plaintiff filed this action against Defendants in the District Court of Oklahoma County, State of Oklahoma.¹ Plaintiff is a Puerto Rico corporation with its principal place of business in Odessa, Texas. *See* Petition [Doc. No. 1-1] at 1. Defendant Mammoth Energy Services, Inc. is a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma, and Defendant Cobra Acquisitions, LLC is a Delaware limited liability company with one or more members who are citizens of Oklahoma and its principal place of business in Oklahoma City, Oklahoma.² *See id.* at 1-2. On December 16, 2021, and prior to being served, Defendants removed this case to this Court pursuant to 28 U.S.C. §§ 1332, 1367, and 1446. On

¹ Plaintiff had previously filed suit against Defendants in state court on May 13, 2021. Defendants removed that case to this Court on May 18, 2021 pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446. Defendants filed a motion to dismiss, and on July 29, 2021, Plaintiff voluntarily dismissed the case. *See* Docket Sheet in *Foreman Elec. Servs. Inc. v. Mammoth Energy Servs. Inc., et al.*, CIV-21-518-R.

² It is undisputed Defendants are Oklahoma citizens.

December 23, 2021, Plaintiff served Defendants. Based upon the forum defendant rule set forth in 28 U.S.C. § 1441(b)(2), Plaintiff now moves the Court to remand this case back to state court.

Section 1441(b)(2) provides:

A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(b)(2). Because Defendants had not been served at the time they removed this case, they contend the forum defendant rule does not apply. While the specific language of § 1441(b)(2) would allow a case to be removed as long as the forum defendant had not been served, a limited, judicially crafted exception has been recognized for absurd and bizarre results such as removal before any defendant has been served or removal before the plaintiff has had a reasonable opportunity to serve the forum defendant. *See Woods v. Dr. Pepper Snapple Grp., Inc.*, Case No. CIV-19-1162-F, 2020 WL 917284 (W.D. Okla. Feb. 26, 2020); *Howard v. Crossland Constr. Co.*, Case No. 17-CV-00480-TCK-FHM, 2018 WL 2463099 (N.D. Okla. June 1, 2018); *Snyder v. Moore*, No. CIV-13-1282-L, 2014 WL 11032956 (W.D. Okla. Feb. 11, 2014); *Lone Mountain Ranch, LLC v. Santa Fe Gold Corp.*, Case No. 13cv00962 WJ/KBM, 988 F. Supp. 2d 1263 (D.N.M. 2013).

Based upon the facts in this case, the Court concludes the exception applies and this case should be remanded back to state court. There are no non-forum defendants in this case; all defendants are Oklahoma citizens. Further, no defendant had been served prior to removal. Additionally, Plaintiff had not had a reasonable opportunity to serve Defendants prior to the removal of the case. Defendants removed the case only two days after it was filed; seven days later, Defendants were served. In light of these facts, the Court finds that failing to apply the forum defendant rule in this case would lead to an absurd result.

Accordingly, the Court GRANTS Plaintiff's Motion to Remand Case to Oklahoma County District Court [Doc. No. 7] and REMANDS this case to the District Court of Oklahoma County, State of Oklahoma.

IT IS SO ORDERED this 5th day of May, 2022.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE